85-2128

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

STATE OF FLORIDA,

Petitioner,

v.

KEVIN R. CROSS

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT

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QUESTION PRESENTED

WHETHER A PROBATIONER MAY INVOKE THE EXCLUSIONARY RULE IN A PROBATION REVOCATION PROCEEDING TO BAR RELEVANT EVIDENCE FROM BEING ADMITTED ON THE GROUND THAT IT WAS SEIZED IN VIOLATION OF THE FOURTH AMENDMENT?

QUESTION PRESENTED

WHETHER A PROBATIONER MAY
INVOKE THE EXCLUSIONARY RULE
IN A PROBATION REVOCATION
PROCEEDING TO BAR RELEVANT
EVIDENCE FROM BEING ADMITTED
ON THE GROUND THAT IT WAS
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FOURTH AMENDMENT?

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Florida Constitution 2,5,8

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OPINIONS BELOW

The decision of the Supreme Court of the State of Florida was rendered on May 1, 1986. It is not yet reported, but it is reproduced in the State's appendix (A 20-29). The opinion of the intermediate appellate court, the Second District Court of Appeal, was rendered on May 24, 1985. It is reported as Cross v. State, 469 So.2d 226 (Fla. 2d DCA 1985) (A 7-19). The trial court denied the motion to suppress on December 13, 1984 in an unreported order which is set forth in the appendix (A-6(a)

GROUNDS UPON WHICH JURISDICTION IS INVOKED

The opinion of the Supreme Court of Florida was rendered on May 1, 1986.

The jurisdiction of this Court is timely invoked pursuant to the provisions of Title 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in pertinent part:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated. . .

Article I, Section 12, of the Florida Constitution as amended effective January 4, 1983, provides:

> SECTION 12. Searches and seizures. --The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception

> of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.
>
> (Emphasis added)

STATEMENT OF THE CASE

The Respondent, Kevin R. Cross, was placed on one year probation on July 28, 1983, following the entry of

a guilty plea to the charge of Resisting an Officer without violence. On July 27, 1984, Respondent was charged with violating the terms of his probation by virtue of his arrest on July 16, 1984 for the offense of Grand Theft.

Through counsel, Respondent filed a Motion to Suppress evidence, a .38 caliber colt firearm seized from the Respondent's residence and statements made by Respondent about the firearm to Sheriff's personnel after the seizure. (A1-6). The trial court denied Respondent's Motion to Suppress and revoked his probation.

On direct appeal, the Second District Court reversed, finding the Motion to Suppress should have been

granted; however, concerning whether the ruling was applicable to the probation revocation hearing, the court certified the following question to the Supreme Court of Florida as one of great public importance:

> WHETHER AMENDED ARTICLE I, SECTION 12, OF THE FLORIDA CONSTITUTION PROHIBITS ILLEGALLY OBTAINED ARTICLES AND INFORMATION FROM BEING ADMITTED IN EVIDENCE IN PROBATION REVOCATION PROCEEDINGS? (A 18-19)

Cross v. State, 469 So.2d 226, 228 (Fla. 2d DCA 1985).

In State v. Cross, 11 F.L.W. 193, the Florida Supreme Court answered the question in the affirmative, thereby approving the decision of the Second District Court of Appeal.

The Florida Supreme Court ruled that since this Court has never decided whether the exclusionary rule applies to probation revocation proceedings, it would continue to adhere to its prior case law finding the rule applicable, State v. Dodd, 419 So.2d 333 (Fla. 1982); Grubbs v. State, 373 So.2d 905 (Fla. 1979), despite the fact that these cases were decided prior to the 1983 state constitutional amendment.

State v. Cross, ___ So.2d ___ 11 FLW 193, 194 (Fla., Opinion Filed May 1, 1986)

(A 20-29)

REASONS FOR GRANTING THE WRIT

The Fourth Amendment "has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons." Stone v. Powell, 428 U.S. 465, 49 L.Ed.2d 1067, 96 S.Ct. 3037 (1976) Application of the exclusionary rule is determined by weighing the costs and benefits of its use in a given situation. In utilizing the balancing approach approved in United States v. Leon, 468 U.S. ___, 1045 S.Ct. 3405, 82 L.Ed.2d 677 (1984), the court must determine whether the purposes of he exclusionary rule will be furthered; i.e. whether the likelihood of deterring police misconduct

is sufficient to justify the substantial social costs attendant with the loss of probative evidence.

Although urged to engage in such a cost-benefit analysis by the State, the Florida Supreme Court declined to determine whether, under the Fourth Amendment, the state courts should apply the exclusionary rule in probation revocation proceedings. The 1983 amendment to Article I, Section 12, of the Florida Constitution, provides that only evidence inadmissible under the Fourth Amendment, as construed by this Court, is inadmissible in judicial proceedings in Florida. Although this Court has never specifically held the

exclusionary rule inapplicable to probation revocation proceedings, it has held that a probationer in a probation revocation proceeding is not entitled to the full panoply of rights guaranteed a defendant in a criminal trial. Morrissey v. Brewer, 408 U.S. 471, 33 L.Ed 2d 484, 92 S.Ct 2593 (1972); Gagnon v. Scarpelli, 411 U.S. 778, 36 L.Ed. 2d 656, 93 S.Ct 1756 (1973). In accordance with the balancing approach directed by Leon, the State submits the deterrence rationale of the exclusionary rule is adequately served by excluding any illegally-seized evidence from the substantive criminal prosecution, while permitting its use in the probation revocation proceeding. This approach provides that no one will have evidence seized

in contravention of the Fourth Amendment used against him in a substantive criminal trial, while at the same time ensuring that a probationer who has been given by judicial grace an opportunity to live at liberty, cannot continue on probation if he flouts the law.

The Florida Supreme Court, by declining to apply Fourth Amendment analysis in its disposition of the instant case, has decided a substantial federal question which has not yet been resolved by this Court. The result reached by the Florida Supreme Court--the exclusion of illegally-seized evidence in a probation revocation proceeding--is incorrect in light of the principles discussed in Morrissey v. Brewer,

Gagnon v. Scarpelli, and United States v. Leon, supra. Therefore, this case should be accepted for review.

Moreover, although the majority of federal courts which have considered the issue have ruled the exclusionary rule inapplicable to probation revocation hearings, at least one court has concluded the rule does apply. See United States v. Bazzano. 712 F.2d 826 (3rd Cir. 1983), cert. denied, 465 U.S. 1078 (1984); United States v. Frederickson, 581 F.2d 711 (8th Cir. 1978); United States v. Winsett, 518 F.2d 51 (9th Cir. 1975); United States v. Farmer, 512 F.2d 160 (6th Cir.), cert. denied, 423 U.S.987 (1975); United States v. Brown, 488 F.2d 94 (5th Cir. 1973); but see

United States v. Workman, 585 F.2d 1205 (4th Cir. 1978).

Thus, the Florida Supreme Court has decided a federal question in a manner which conflicts with the way a majority of the Circuit Courts of Appeal have ruled on the issue.

The federal question presented in this case is an important and substantial issue. Its resolution by this Court will settle a question on which the state and federal courts are divided. A decision by this Court will control all future probation revocation proceedings in which a probationer, charged with violating the terms of his probation, contends that evidence relevant to proving the charged violation was illegally

seized and so inadmissible. It is the State's position that judges, both federal and state, who are charged with the responsibility of granting and/or revoking probation, are entitled to be fully aware of the circumstances of any violation. Double application of the exclusionary rule to both the substantive offense and a probation revocation proceeding undermines the effectiveness of probation. United States ex rel. Lombardino v. Heyd, 318 F. Supp. 648 (E.D. La. 1970), affirmed 438 F.2d 1027 (5th Cir. 1971).

This Court has previously held the exclusionary rule does not apply in all judicial proceedings. I.N.S. v. Lopez-Mendoza, 468 U.S. __,82 L.Ed.2d 778

104 S. Ct. 3479 (1984) [civil deportation proceedings]; United States v. Janis, 428 U.S. 433, 49 L.Ed.2d 1046, 96 S.cr. 3021 (1976) [use of evidence illegally seized by state officials permitted in federal civil tax assessment proceedings]; United States v. Calandra, 414 U.S. 338 (1974) [grand jury proceedings]. The issue presented in this case is equally as important as in the foregoing cases, for it will have far-reaching effect. The State urges this Court to grant certiorari review.

CONCLUSION

Petitioner has sought to present to this Court a substantial basis upon which to conclude that the applicability vel non of the exclusionary rule

to probation revocation proceedings is an issue worthy of being addressed by the United States Supreme Court.

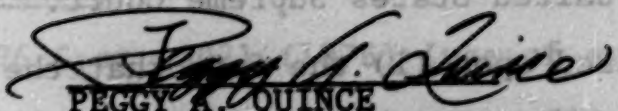
Based upon (1) the fact that the Florida Supreme Court decided a substantial federal question not previously determined by this Court; and (2) a conflict between the opinion under review and the majority of the federal courts of appeal, the Petitioner respectfully submits that the instant Petition for Writ of Certiorari should be granted.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

Katherine Blanco

KATHERINE V. BLANCO
Assistant Attorney General



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COUNSEL OF RECORD FOR PETITIONER

CERTIFICATE OF SERVICE

I, PEGGY A. QUINCE, Counsel for Petitioner, and a member of the Bar of the United States Supreme Court, hereby certify that on the 23rd day of June, 1986, I served three copies of the Petition for Writ of Certiorari on Joel E. Grigsby, Assistant Public Defender Hall of Justice Building, 455 North Broadway, P. O. Box 1640, Bartow, Florida 33830-3798, by a duly addressed envelope with postage prepaid.

PEGGY A. QUINCE
Assistant Attorney General

CERTIFICATE OF SERVICE

I, PEGGY A. QUINCE, Counsel for Petitioner, and a member of the Bar of the United States Supreme Court, hereby certify that on the 17th day of June, 1986, I served three copies of the Petition for Writ of Certiorari on Joel K. Crigsby, Assistant Public Defender Hall of Justice Building, 455 North Broadway, P. O. Box 1640, Bartow, Florida 33830-3798; by a duly addressed envelope with postage prepaid.

PEGGY A. QUINCE
Assistant Attorney General

APPENDIX

APPENDIX

IN THE CIRCUIT COURT,
POLK COUNTY, FLORIDA

STATE OF FLORIDA Appellant, v. KEVIN R. CROSS, Appellee.	)	CASE NO. CF83-0641 (VOP)

MOTION TO SUPPRESS EVIDENCE

Defendant, through counsel and pursuant to Florida Rules of Criminal Procedure 3.190(i), moves this Honorable Court to suppress certain evidence in this cause.

EVIDENCE TO BE SUPPRESSED:

1. .38 caliber colt firearm seized from Defendant's residence on Redgrave Road, Loughman, Florida.

2. Statements by Defendant to Sheriff personnel about said firearm after its seizure.

GROUNDS FOR SUPPRESSION:

1. The evidence was illegally seized without a warrant, in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 12 of the Constitution of the State of Florida.

2. The evidence was obtained only as a result of an illegal search without a warrant, in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 12 of the Constitution of the State of Florida.

3. The evidence was obtained only as a result of an illegal entry of defendant's residence by law enforcement

in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 12 of the Constitution of the State of Florida.

4. The evidence was obtained in violation of Defendant's right to privacy guaranteed by Article I, Section 23, of the Constitution of the State of Florida.

5. The evidence is the "tainted fruit of the poisonous tree," having been obtained only as a result of illegal law enforcement activity, to-wit: the statements were obtained only after and as a direct result of the illegal seizure of said firearm.

FACTUAL BASIS:

1. The Polk County Sheriff's Department investigated a suspicious shooting incident involving Defendant on March 24, 1984.

2. Deputy Jimmie Carter interviewed Defendant and the shooting victim at the Heart of Florida Hospital where both gave consistent statements that the shooting was entirely accidental.

3. Deputy Carter proceeded to Defendant's residence on Redgrave Road, Loughman, where the shooting was said to have happened.

4. When Deputy Carter arrived, unidentified persons were inside Defendant's residence, cleaning blood in the north bedroom.

5. Deputy Carter walked inside the residence without consent, license or authorization.

6. In the north bedroom, Deputy Carter saw said firearm.

7. Deputy Carter seized said firearm.

8. Deputy Carter did not have evidence at the time of the seizure to give probable cause that any crime had occurred or that the firearm was evidence of any crime.

9. On a date after the firearm's seizure, Investigator Billie Whatley questioned Defendant about the firearm found and seized at his residence and Defendant answered Whatley's questions.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an Order suppressing in this cause the evidence described above.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to the State Attorney's Office mail box in the Hall of Justice, Bartow, Florida, this the 18th day of October, 1984.

JERRY HILL
Public Defender
Hall of Justice Building
P. O. Box 1640
Bartow, Florida 33830

BY: /s/ LAWRENCE D. SHEARER
LAWRENCE D. SHEARER
Assistant Public Defender

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR POLK COUNTY

STATE OF FLORIDA)
)
V.)
) CASE NO.
KEVIN R. CORSS) CF83-0641
)

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

THIS CAUSE coming out to be heard before me upon the Defendant's Motion to Suppress and the Court being fully advised in the premises, it is thereupon and accordingly

CONSIDERED, ORDERED AND ADJUDGED that: the Defendant's Motion to Suppress is hereby DENIED.

DONE AND ORDERED at Bartwo, Polk County, Florida, this 13th day of December, 1984.

CIRCUIT JUDGE

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA
SECOND DISTRICT

KEVIN RICHARD CROSS,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NO.
	)	84-2688
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	

Opinion filed May 24, 1985

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

Appeal from the CircuitCourt for Polk County; Oliver L. Green, Jr., Judge.

James Marion Moorman, Public Defender, and Joel E. Grigsby, Assistant Public Defender, Bartow, for Appellant.

Jim Smith, Attorney General, Tallahassee, and Katherine v. Blanco, Assistant Attorney General, Tampa, for Appellee.

SCHEB, Judge.

The trial court placed defendant, Kevin Richard Cross, on probation for one year on July 28, 1983. The day before his probation was set to expire, the court issued a warrant charging him with violating the terms of his probation by committing grand theft of a firearm. The trial court revoked defendant's probation and sentenced him to six months in jail. Defendant contends that the firearm was illegally seized from his residence during a warrantless search. Thus, he argues that it and his subsequent statement to a law enforcement officer about the firearm were inadmissible in evidence at his revocation hearing. We agree.

At the hearing it was disclosed that on March 24, 1984, Deputy Jimmie Carter of the Polk County Sheriff's Department investigated a report of a shooting. She interviewed the defendant and the victim, Cynthia Lanning, at the Heart of Florida Hospital in Haines City. They explained to the deputy that when defendant picked up a handgun at his residence, it accidentally discharged wounding Lanning. At that point Deputy Carter told defendant that she was going to his home to investigate the "crime scene." The deputy said that defendant seemed extremely upset but did not tell her that she could not do so.

Deputy Carter did not secure a warrant. Rather, she traveled directly to defendant's home. Entering the bedroom, she found a handgun on the bed and observed what appeared to be a bullet hole in the wall. She seized the gun, which appeared to her to have been fired recently. The sheriff's department retained the gun in its custody.

In April Susan Baker reported to the Sheriff that a handgun was missing from her home in Polk County. While checking out her complaint, Sheriff's Investigator Whatley compared serial numbers and concluded that he firearm seized by Deputy Carter was Baker's

handgun. Thereafter, Whately contacted the defendant, who admitted having the gun in his home; however, he denied stealing it.

The trial court denied defendant's motion to suppress the handgun seized by Deputy Carter and the statement he made concerning it to Investigator Whatley. The trial judge concluded that while the defendant did not consent to have his residence searched, the warrantless search and seizure came within the emergency doctrine exception to the warrant requirement. We think the court erred.

Warrantless searches are per se unreasonable under the Fourth Amendment to the United States Constitution, subject to a few specifically

established and well-delineated exceptions. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 567 (1967). One such exception is the emergency doctrine. This exception had its origin in the dictum in Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436 (1948), where the Supreme Court stated that exceptional circumstances could dispense with the need for a warrant.

This emergency or exigency rule first recieved recognation in Florida in Webster v. State, 201 So.2d 789 (Fla. 4th DCA 1967), and has been applied under various circumstances. See, e.g., Guin v. City of Riviera Beach, 338 So.2d 604 (Fla. 4th DCA 1980) (reasonable

belief that a crime was in progress held sufficient to justify a warrantless entry); Grant v. State, 374 So.2d 630 (Fla. 3d DCA 1979) (officers responding to reported shooting held to have properly entered apartment where they discovered certain evidence); Long v. State, 310 So.2d 35 (Fla. 2d DCA 1975) (preservation of human life justified an emergency entry of a home and admissibility of contraband obtained).

To invoke the emergency rule to search a person's home, the exigencies of the situation must be so compelling as to make a warrantless search objectively reasonable. See Mincey v. Arizona, 437

U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978). Here, the information possessed by Deputy Carter indicated an accidental shooting. While she may have entertained some suspicions, there were no exigencies or emergency circumstances to justify a warrantless search of defendant's residence. Accordingly, we hold that the handgun seized by Deputy Carter and defendant's statement to Investigator Whately were illegally obtained evidence.

Having concluded that defendant's probation was revoked on basis of illegally obtained evidence, we now turn to the question of whether such evidence was inadmissible in a probation revocation proceeding. This brings us

to a discussion of the applicability of the exclusionary rule. This rule commands that illegally obtained evidence be excluded form criminal proceedings.

In State v. Dodd, 419 So.2d 333 (Fla. 1982), the Florida Supreme Court held that the exclusionary rule applied to probation revocation proceedings. The court based its decision on Article I, section 12, of the Florida Constitution, which formerly prohibited any illegally obtained evidence from being admitted in court therby giving constitutional status to the exclusionary rule. However, effective Janurary 4, 1983, that section was amended. Now, protection against unreasonable searches and seizures under the Florida Constitution is construed in conformity with

the Fourth Amendment to the United States Constitution as interpreted by the United States Supreme Court. As amended, our state constitution now provides that "articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment ot the United States Constitution." Art. I, §12, Fla.Const.

The United States Supreme Court has not directly held the exclusionary rule is inapplicable to probation revoction proceedings. It has, however, noted that a probationer is not entitled to the full panoply of procedural rights

guaranteed a defendant who is prosecuted for a crime. Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). See also Marrisey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). There is a division of opinion among the lower federal courts as to whether the exclusionary rule applies in probation revocation proceedings. See, e.g., Annot., 30 A.L.R. Fed. 824 (1976); N.Cohen and J. Gobert, The Law of Probation and Parole, §9.13 (1983).

In recent rulings the Supreme Court has emphasized that the exclusionary rule is not constitutionally required and has tended to balance the social benefits of excluding evidence against

the costs to society resulting from such exclusion. See, e.g., United States v. Leon, 468 U.S. 677, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); United State v. Janis, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976); United States v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974). We think resolution of whether the exclusionary rule is applicable to probation revocation proceedings is a matter of great public importance which should be addressed by the Florida Supreme Court.[1]

Accordingly, we certify to the supreme court the following question:

> WHETHER AMENDED ARTICLE I, SECTION 12, OF THE FLORIDA CONSTITUTION PROHIBITS ILLEGALLY OBTAINED ARTICLES

AND INFORMATION FROM BEING ADMITTED IN EVIDENCE IN PROBATION REVOCATION PROCEEDINGS?[2]

Reversed and sentence vacated.

RYDER, C. J., and HALL, J., Concur.

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1. In Croteau v. State, 334 So.2d 577 (Fla. 1976), the court stated that the exclusionary rule does not apply in revocation proceedings; however, in State v. Dodd, the court, in footnote two, pointed out that it was unnecessary to decide that question in Croteau, and that the statement may be regarded as dicta, since the case dealt with prosecution of a new offense rather than revocation of probation.

2. This issue has also been certified to the supreme court in Tamer v. State, 463 So.2d 1236 (Fla. 4th DCA 1985).

STATE OF FLORIDA, Petitioner, vs. KEVIN RICHARD CROSS, Respondent. Supreme Court of Florida, Case No. 67,137. May 1, 1986. Application for Review of the Decision of the District Court of Appeal--Certified Great Public Importance. Second District--Case No. 84-2688. Jim Smith, Attorney General and Katherine V. Blanco, Assistant Attorney General, Tampa, Florida, for Petitioner. James Marion Moorman, Public Defender and Joel E. Grigsby, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida, for Respondent.

(PER CURIAM.) We have before us by petition for review Cross v. State, 469 So.2d 226 (Fla. 2d DCA 1985), wherein the district court certified a question of great public importance. We have jurisdiction under article V, section 3(b)(4), Florida Constitution.

The facts surrounding respondent Cross's revocation of probation are recounted in the district court's opinion. It is sufficient for the purpose of addressing the certified

question to note that the district court reversed the trial court's order, finding erroneous its conclusion that the nonconsensual warrantless search of Cross's home came within the emergency doctrine exception to the warrant requirement. The district court, having concluded that Cross's probation was revoked based on illegally obtained evidence, then addressed the inadmissibility of such evidence in a probation revocation proceeding and certified the following question:

> WHETHER AMENDED ARTICLE 1, SECTION 12, OF THE FLORIDA CONSTITUTION PROHIBITS ILLEGALLY OBTAINED ARTICLES AND INFORMATION FROM BEING ADMITTED IN EVIDENCE IN PROBATION REVOCATION PROCEEDINGS?

Id. at 228.

We agree with the district court's conclusion that the evidence in this case was illegally seized. The state does not challenge this holding, but argues that amended article 1, section 12, Florida Constitution, effective January 4, 1983, renders the exclusionary rule no longer applicable in probation revocation proceedings in Florida. Prior to the amendment, we held that the exclusionary rule did apply in probation revocation proceedings. State v. Dodd, 419 So.2d 333 (Fla. 1982); Grubbs v. State, 373 So.2d 905 (Fla. 1979). The amended section, with new language underlined, reads as follows:

> SECTION 12. Searches and seizures.--The right

of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

The state urges that the rationale of our previous cases, this Court's conclusion that the Florida constitutional proscription against unreasonable searches and seizures is more restrictive than its federal counterpart, no longer has any constitutional basis under the amendment. The state concedes that no United States Supreme Court decision specifically holds the exclusionary rule inapplicable to probation revocation proceedings. It points out, however, that a probationer in a probation revocation proceeding is not entitled to the full panoply of rights guaranteed to a defendant in a criminal proceeding. Gagnon v. Scarpelli, 411 U.S. 778 (1973). The state

argues that as the exclusionary rule is not constitutionally required, but rather is a judicial remedy designed to curtail police misconduct, e.g., United States v. Leon, 104 S. Ct. 3430 (1984), its remedy is adequately served by excluding illegally seized evidence from substantive criminal prosecutions, while permitting its use in probation revocation hearings. The state suggests that we should hold the exclusionary rule inapplicable in these latter proceedings in conformity with the majority of federal circuits. See United States v. Bazzano, 712 F.2d 826 (3d Cir. 1983), cert. denied, 465 U.S. 1078 (1984); United States v. Frederickson, 581 F.2d 711 (8th Cir. 1978); United States v. Winsett, 518 F.2d 51

(9th Cir. 1975); United States v. Farmer, 512 F.2d 160 (6th Cir.), cert. denied, 423 U.S. 987 (1975); United States v. Brown, 488 F.2d 94 (5th Cir. 1973); but see United States v. Workman, 585 F.2d 1205 (4th Cir. 1978). The state also contends that this Court eimplicitly recognized that under the amendment the exclusionary rule does not apply to probation revocation proceedings. State v. Lavazzoli, 434 So.2d 321 (Fla. 1983).

Regarding Lavazzoli, respondent correctly points out that it was decided on the narrow question of whether the amendment would apply to that pending case. Lavazzoli does not compel the result for which the state argues here.

Respondent argues that our holding in Dodd should control unless the amendment affirmatively negates Dodd, and that the amendment refers not to a majority of federal law, but rather only to United States Supreme Court decisions as controlling. Respondent cites Lavazzoli:

> When faced with constitutional amendments not clearly expressing an intent to the contrary, this Court has repeatedly refused to construe the amendment to affect detrimentally the subtantive rights of persons arising under the prior law.

Id. at 324.

The United States Supreme Court has not ruled on the issue presently before us. Therefore, it is not necessary to interpret the amendment to article I, section 12.

We approve the decision of the district court on the authority of Dodd which is still the controlling state law.

It is so ordered. (BOYD, C.J., and ADKINS, McDONALD, EHRLICH, SHAW and BARKETT, JJ., Concur. OVERTON, J., Concurs specially with an opinion.)

(OVERTON, J., specially concurring.) I fully concur. In answering he certified question in this cause, it should be understood that this opinion has not changed the principle we established in Grubbs v. State, 373 So.2d 905 (Fla. 1979), that a probationer's constitutional rights are more limited than an ordinary citizen's. In Grubbs, in considering the reasonableness of a search of a

probationer, this Court expressly held that the status of a probationer is different from that of an ordinary person; that a probationer is subject to certain restrictions on his living in open society; that, to protect the public, a probation supervisor must be allowed the necessary authority to supervise the probationer, including the search of a probationer's person or residence without warrant; and that such a search is a reasonable search under the state and federal constitutions.